



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

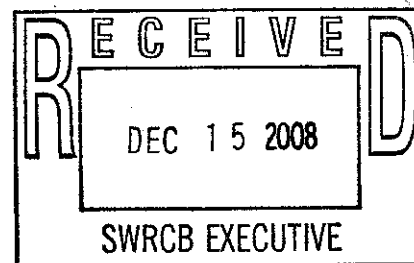
1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

December 15, 2008

Via Electronic Mail and Overnight Mail
Tam Doduc, Chair and Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
ATTN: Jeanine Townsend, Clerk to the Board

Dear Chair Doduc & Members:



Comment Letter – Policies on SEPs and Use of the CAA for Regional Water Quality Improvement Projects

The Sanitation Districts of Los Angeles County (Districts) are pleased to have the opportunity to provide comments to the State Water Resources Control Board (State Water Board) on the proposed Policies on Supplemental Environmental Projects (SEPs) and Use of the State Water Pollution Cleanup and Abatement Account (CAA) for Regional Water Quality Improvement Projects (WQIPs) (both dated October 15, 2008). By way of background, the Districts are a confederation of 24 individual special districts serving the wastewater and solid waste management needs of over 5 million people in 78 cities and unincorporated areas of Los Angeles County. The Districts own and operate 11 wastewater treatment facilities with a combined capacity of approximately 625 million gallons per day. Of these facilities, 9 are located in the Los Angeles region, and 2 are located in the Lahontan region.

In February of this year, the Districts submitted comments on the proposed revisions to the Water Quality Enforcement Policy (WQEP), including comments on the provisions related to use of SEPs. We find several aspects of the proposed SEP policy to be an improvement over the provisions contained in the proposed WQEP, which we believe will make the SEP policy more flexible and workable for Regional Boards and for parties wishing to apply funds to SEPs in the course of settling administrative enforcement actions. For instance, provisions setting forth SEP qualification criteria and nexus criteria afford greater flexibility than the proposed WQEP, and as such, we believe will be more practical and effective, given the diversity of circumstances that may arise around the state. We strongly support the inclusion of the statement on page 1 of the proposed SEP policy in support of use of SEPs in administrative civil liability actions, and agree that SEPs can be useful in the facilitation of settlements, and avoid outlays of public resources for protracted disputes. However, taken together, we believe that the proposed SEP and CAA Policies will have a chilling effect on the use of SEPs, and will preclude numerous beneficial projects, discourage settlement, and could result in more enforcement actions going to formal hearing before the Regional Water Boards and potentially being petitioned to the State Water Board. This is because of the disincentives for SEPs built into the proposed Policies. The Districts' specific concerns about the proposed SEP and CAA Policies are set forth below.

1. Cap on SEP amounts – the proposed SEP Policy contains two options for capping SEP amounts. Both set a 50% cap, with the first being a hard cap and the second option allowing higher amounts under "exceptional circumstances." The Districts oppose setting an arbitrary 50% cap,

and instead recommend that Regional Boards be given the discretion to set the amount in SEPs based on the circumstances. In some cases, 50% may be too high and in other case it may be too low. For example, if a proposed penalty amount is \$50,000, the SEP would be capped at \$25,000, which may not be enough funding for a project to be accomplished (and there may not be an option of performing the project in phases or of collecting funds from multiple sources to accumulate sufficient funding for the project). We also believe that Option 2 should be rejected, since it appears unlikely that merely allowing higher SEP amounts under "exceptional circumstances" will result in any meaningful difference in outcome from Option 1. Instead, we propose that no cap on SEP amounts be included, and that the Regional Boards be afforded discretion to allocate appropriate amounts to SEPs based on the unique circumstances of each case.

2. Calculation of 50% cap – notwithstanding the comment above regarding the cap, if a cap is imposed, the amount that can be applied to a SEP should not be calculated after subtracting the Water Board's investigative and enforcement costs from the total monetary assessment. With the exception of cleanup and abatement orders, where these costs actually are recouped, the costs of investigation and enforcement are calculated and used in the determination of the total monetary assessment. They are not actually collected and used again for the same purpose. Instead, this proposed provision appears to be solely aimed at further reducing the penalty amounts that may be directed to SEPs. Thus, we recommend that this provision be stricken.
3. Education and outreach projects – the proposed SEP Policy does not include within the list of types of projects that may qualify as SEPs those that are for the express purpose of promoting education of the public or of certain target audiences about water quality issues and ways of protecting water quality. It is widely recognized that for water quality to improve meaningfully, behavior of members of the public must change. Water quality education and outreach projects are particularly good candidates for SEPs, because they may not be carried out as part of routine compliance activities due to the fact that the results may be diffuse and long-term in nature. For these reasons, we strongly recommend that education and outreach projects be added to section C (General SEP Quality Criteria), subsection 2, as examples of the types of projects that qualify as SEPs.
4. Lists of approved SEPs – Section F states that each Regional Board will maintain a list of approved SEPs, and states that the list shall be available on the Water Board's web site. The proposed Policy leaves up to the Regional Boards the process and frequency for updating the lists of approved SEPs. We recommend that the proposed Policy be amended to add more specificity regarding the process for adding projects to a list of approved SEPs (such as specifying that a project solicitation, followed by public notice and comment, will occur). Further, we ask that the proposed Policy be amended to specify that Regional Water Boards may also approve allocation of funding to SEPs not included on the list of approved SEPs on a case-by-case basis. This is sometimes necessary in situations where no SEP is included on the approved list that is appropriate for funding in a given situation (e.g. none located in the watershed, funding amounts do not match, funding need has already been fulfilled, etc.).
5. Policy for Use of the CAA for WQIPs – by making the reserved amount proportional to the enforcement funds collected by each region, the new proposed CAA Policy does not ensure that the CAA funds will be allocated where they are most needed for projects to "remedy a significant unforeseen water pollution problem," as directed in Water Code Section 13443. Further, the proposed Policy states that funds allocated to SEPs in a given enforcement action will be subtracted from the amounts available for WQIPs in that region, thereby creating a disincentive for Regional Water Boards to use SEPs. This is contrary to the statement of support for SEPs contained in the proposed SEP Policy. Primarily for these reasons, we do not support the proposed CAA Policy as written.

Tam Doduc, Chair and Members

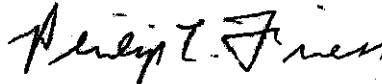
-3-

December 15, 2008

Thank you for the opportunity to comment on these proposed policies. If you have any questions, please contact me or Sharon Green of my staff at (562) 908-4288.

Very truly yours,

Stephen R. Maguin

A handwritten signature in dark ink, appearing to read "Philip L. Friess". The signature is fluid and cursive, with the first name "Philip" being more prominent.

Philip L. Friess
Department Head
Technical Services Department

PLF:SNG:tm